EXHIBIT X

1 │ Kathleen Sullivan (SBN 242261) │ Steven Cherny *(admitted pro hac vice)*
kathleensullivan@quinnemanuel.com │ steven.cherny@kirkland.com

2 │ QUINN EMANUEL URQUHART & │ KIRKLAND & ELLIS LLP
SULLIVAN LLP │ 601 Lexington Avenue

3 │ 51 Madison Avenue, 22nd Floor │ New York, New York 10022
New York, NY 10010 │ Telephone: (212) 446-4800

4 │ Telephone: (212) 849-7000 │ Facsimile: (212) 446-4900
Facsimile: (212) 849-7100

5 │ │ Adam R. Alper (SBN 196834)
Sean S. Pak (SBN 219032) │ adam.alper@kirkland.com

6 │ seanpak@quinnemanuel.com │ KIRKLAND & ELLIS LLP
Amy H. Candido (SBN 237829) │ 555 California Street

7 │ amycandido@quinnemanuel.com │ San Francisco, California 94104
John M. Neukom (SBN 275887) │ Telephone: (415) 439-1400

8 │ johnneukom@quinnemanuel.com. │ Facsimile: (415) 439-1500
QUINN EMANUEL URQUHART &

9 │ SULLIVAN LLP │ Michael W. De Vries (SBN 211001)
50 California Street, 22nd Floor │ michael.devries@kirkland.com

10 │ San Francisco, CA 94111 │ KIRKLAND & ELLIS LLP
Telephone: (415) 875-6600 │ 333 South Hope Street

11 │ Facsimile: (415) 875-6700 │ Los Angeles, California 90071
│ Telephone: (213) 680-8400

12 │ Mark Tung (SBN 245782) │ Facsimile: (213) 680-8500
marktung@quinnemanuel.com

13 │ QUINN EMANUEL URQUHART &
SULLIVAN LLP

14 │ 555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065

15 │ Telephone: (650) 801-5000
Facsimile: (650) 801-5100

16

Attorneys for Plaintiff Cisco Systems, Inc.

17

18   **UNITED STATES DISTRICT COURT**

19   **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

20

CISCO SYSTEMS, INC.,   CASE NO. 5:14-cv-5344-BLF

21

Plaintiff,   **CISCO'S OPPOSITION TO ARISTA'S**

22   **CORRECTED NOTICE OF MOTION**
                                                 AND MOTION TO STRIKE EXPERT

vs.   **OPINIONS AND TESTIMONY OF DR.**

23   **KEVIN C. ALMEROTH**
ARISTA NETWORKS, INC.,

24   **REDACTED VERSION**
Defendant.

25
                                         Date: September 9, 2016

26   Time: 9:00 a.m.
                                         Dept: Courtroom 3 - 5th Floor

27   Judge: Hon. Beth Labson Freeman

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Case No. 5:14-cv-5344-BLF

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Case No. 5:14-cv-5344-BLF

02099-00004/8272797.1   CISCO'S OPP. TO ARISTA'S MOTION TO STRIKE ALMEROTH

1   Plaintiff Cisco Systems, Inc. ("Cisco") hereby respectfully opposes Defendant Arista

2 Networks, Inc.'s ("Arista") Corrected Motion to Strike Expert Opinions and Testimony of Dr.

3 Kevin C. Almeroth (Dkt. 420, "Motion" or "Mot.") based on the Memorandum of Points and

4 Authorities below; the Declaration of John Neukom that is being filed herewith; and such other

5 and further papers, evidence and argument as may be submitted to the Court in connection with

6 the hearing on this Motion.

7 **I.   INTRODUCTION**

8   Arista's Motion does not challenge the qualifications of Cisco's technical expert on

9 copying—Professor Kevin Almeroth, Ph.D. Arista instead moves to strike highly relevant

10 testimony from Professor Almeroth related to source code similarities; Arista's admitted copying

11 of the "look and feel" of Cisco's CLI; facts underlying Professor Almeroth's copying opinions;

12 unspecified claims of "vouching"; and Arista's admitted copying of Cisco's copyrighted technical

13 documents. As explained below, none of these arguments has merit, and Cisco respectfully

14 requests that Arista's Motion be denied.

15 **II.   ARGUMENT**

16   **A.   Professor Almeroth Should Not Be Excluded From Offering Opinions About "Source Code" Similarities**

17

18   Arista argues that two of Professor Almeroth's "source code" opinions relating to Arista's

19 "parser" and "help description" copying should be rejected because they are purportedly

20 unreliable. This claim has no merit: Professor Almeroth's opinions are firmly rooted in decades

21 of technical experience, hundreds of hours of case-specific analysis, as well as his review of Arista

22 and Cisco source code, Arista devices, Arista documents and Arista witness testimony.

23   1.   **Professor Almeroth Thoroughly Analyzed Source Code and Formulated Reliable Opinions That Parser Functionality Is Similar**

24   Arista contends that Professor Almeroth's opinion that Arista's EOS parser is similar to

25 Cisco's parser in certain respects is unreliable for various reasons. Mot. at 3. All of Arista's

26 complaints fall flat. First, Arista complains that Professor Almeroth's use of the term "non-

27 standard" when describing the similarities between the two parsers functionality is objectionable

28 because "[h]e provides no data to support his conclusion, nor any method for evaluating the

1 'standard' nature of code" and merely relied on his "expertise." Mot. at 3-4. This argument is

2 legally incorrect. There is nothing "unreliable" about a technical expert relying on his or her

3 relevant experience to formulate expert opinions.[1] Fed. R. Evid. 702, Adv. Comm. Notes (2000)

4 ("Nothing in this amendment is intended to suggest that experience alone—or experience in

5 conjunction with other knowledge, skill, training or education—may not provide a sufficient

6 foundation for expert testimony."). Numerous courts have held that an expert's reliance on

7 experience to formulate technical opinions is proper. *See Icon-IP Pty Ltd. v. Specialized Bicycle*

8 *Components, Inc.*, 87 F. Supp. 3d 928, 946 (N.D. Cal. 2015) ("The Ninth Circuit has found

9 opinions based on an expert's experience in the industry to be proper[.]"); *Radware, Ltd. v. F5*

10 *Networks, Inc.*, No. 13-cv-02024-RMW, 2016 WL 590121, at *20–21 (N.D. Cal. Feb. 13, 2016)

11 (same). As Professor Almeroth explained at his deposition, his characterization of "non-standard"

12 functionality means that "[i]t's not the typical way that you would do the kind of rule-matching

13 that's described in the two parsing systems," which is an opinion firmly rooted in his background

14 and "experience in programming parsers," which Arista does not challenge. Almeroth Tr.

15 (Declaration of Ryan K. Wong, Dkt. 419 ("Wong Decl.") Ex. 3) at 279:12-14, 16-17, 280:4-5,

16 281:6-12. Indeed, Arista does not dispute that Professor Almeroth is a qualified technical expert

17 in computer science and networking. He has 35 years of experience with computer software and

18 has reviewed "innumerable" lines of source code written by many different programmers over

19 those 35 years. Opening Rpt. (Declaration of John M. Neukom ("Neukom Decl.") Ex. 1) at ¶ 29.[2]

20 He teaches university courses in the operation of the network devices at issue in this case

21 including command line interface programs and the underlying software that runs those programs.

22 *Id.* He has analyzed source code of roughly ten network device vendors including Cisco, Arista,

23

24 [1] In fact, Arista's expert Dr. Black relied on his own "experience" on numerous occasion to
support his opinions in this case. *E.g.*, Black Tr. (Neukom Decl. Ex. 3) at 109:10-20 ("all of my
25 experience with Cisco products help inform my opinions"); Black Tr. (Declaration of Andrew M.
Holmes, Dkt. 431 ("Holmes Decl.")) Ex. 4 at 151:19-24 ("I'm going based on my recollection of
26 my experiences in the past"), *id.* at 152:7-9 ("I … remembered the experiences I had").

27 [2] References to "Opening Report" or "Opening Rpt." refer to Professor Almeroth's Opening
Expert Report. References to "Rebuttal Report" or "Rebuttal Rpt." refer to Professor Almeroth's
28 Rebuttal Report.

1   A10, 3Com, Quagga, and Foundry, among others. Almeroth Tr. (Neukom Decl. Ex. 2) at 9:1-

2   10:12, 13:24-14:2. He has spent many hours interacting with various network device vendors

3   operating systems including Cisco, Arista, HP, 3Com, Bay, Nortel, IBM, Juniper, Wellfleet,

4   Netgear, D-Link, Brocade, and Foundry. *Id.*at 12:9-19, 13:7-14:2. And Professor Almeroth

5   explained that his 35 years of experience have given him the expertise to understand the different

6   ways that programs (*e.g.*, parsers) are written to solve similar problems: "What I have found in my

7   decades of experience is that engineers and programmers find many ways to write commands and

8   programs to express solutions to the same problem." Opening Rpt. (Neukom Decl. Ex. 1) at ¶ 30;

9   Almeroth Tr. (Wong Decl. Ex. 3) at 285:21-25 ("So it's based on my experience in the use of

10   parsers and the design of parsers and the way that they operate…."). Arista's complaints are thus

11   legally erroneous and any issues Arista would like to raise about this testimony are more properly

12   addressed during cross examination.

13   Second, Arista complains that Professor Almeroth failed to "provid[e] any facts" to

14   support his parser-related source code opinions. This claim is contradicted by the record.

15   Professor Almeroth spent hundreds of hours analyzing the evidence and formulating his opinions

16   in this case. Almeroth Tr. (Neukom Decl. Ex. 2) at 50:11-14; Opening Rpt. (Wong Decl. Ex. 1) at

17   ¶ 37; Opening Rpt. (Neukom Decl. Ex. 1) ¶ 47. He analyzed "certainly, thousands of lines of

18   code for both Cisco and Arista," and testified that he "would be surprised if it was less than a

19   million lines of code." Almeroth Tr. (Wong Decl. Ex. 3) at 67:11-68:21. In his Opening Report,

20   Professor Almeroth explained in detail, with citations to Arista's source code, the features of

21   Arista's EOS parser that Professor Almeroth concluded are similar to Cisco's. Opening Rpt.

22   (Wong Decl. Ex. 1) at ¶¶ 82-86. Professor Almeroth provided specific evidence in the form of

23   citations to Arista's EOS parser source code, such as "Mode CliParser.py," "ConfigModeBase

24   BasicCli.py," "GlobalConfigMode BasicCli.py," "CliRule.py," and "addCommand," when

25   describing the operation of Arista's EOS parser. *Id.* Exhibit Copying-6 to Professor Almeroth's

26   Opening Report also pin cites hundreds of lines of Arista source code that support his opinions

27   related to source code similarities, as he explained at his deposition. Almeroth Tr. (Wong Decl.

28   Ex. 3) at 287:8-25 ("There are similarities that are based on what you can see on the screen, but

1   it's also, as part of the analysis I did, similarities that exist within the source code.").

2   Third, Arista's claim that Professor Almeroth failed to "contend that Arista had access to"

3   Cisco's source code or that "the Arista engineers who wrote Arista's parser had access to Cisco's

4   source code" misrepresents the totality of the record. Mot. at 3-4. The Court does not need to

5   look any further than the table of contents in Professor Almeroth's Opening Report to see that

6   Arista's claim is wrong. An entire section of the Opening Report, titled "Arista Had Access To

7   Cisco's Copyrighted Works & Admitted Copying," cites ███████████████████████

8   ██

9   ██

10   ██

11   ██

12   ███

13   ███████████████████████████████ Further, in Paragraph 143 of his Opening Report,

14   Professor Almeroth pointed out that numerous Arista executives and engineers are former Cisco

15   executives and engineers, one of whom is Arista's CEO, who claims to have "built" Cisco's

16   products. *Id.* ¶ 143. ████████████████████████████████████

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21   Arista's argument that Professor Almeroth "made no 'effort to rule out other possible

22   causes' of the alleged functionality similarities" is thus baseless. Mot. at 6 (citing *Claar v.*

23   *Burlington N.R.R.*, 29 F.3d 499, 502 (9th Cir. 1994)). In *Claar*, two expert opinions were

24   excluded because, *inter alia*, the experts intentionally ignored other potential causes of plaintiff's

25   injuries that the experts had "admitted … would be standard procedures before arriving at a

26   diagnosis." *Claar v. Burlington N. R. Co.*, 29 F.3d 499, 502 (9th Cir. 1994). Professor Almeroth

27   has never admitted to ignoring any "standard procedures" in formulating his opinions, and neither

28   has Arista identified any such "standard procedures" that were ignored. Professor Almeroth

1   instead analyzed millions of lines of source code, relied on his 35 years of experience, and then

2   took the additional steps of reviewing Arista witness testimony and Arista documentation prior to

3   reaching his ultimate conclusions: "And I think that the distinction with respect to what Arista has

4   done in the context of all of the evidence of copying, and in light of this particular [source code]

5   evidence, is completely different and quite overwhelming as compared to a comparison of the

6   commands alone in the instance of Dell." Almeroth Tr. (Wong Decl. Ex. 3) at 283:4-17.

7   None of the other cases cited by Arista support its requested relief either:

8   • *Schudel v. General Electric Co.*, 120 F.3d 991 (9th Cir. 1997), *Stilwell v. Smith & Nephew,*

9   *Inc.*, 482 F.3d 1187 (9th Cir. 2007), and *Domingo ex rel. Domingo v. T.K.*, 289 F.3d 600,

10   606 (9th Cir. 2002) are products liability/exposure and medical malpractice cases that

11   provide no guidance for assessing "reliability" or "scientific acceptance" in the field of

12   computer science or source code analysis. Indeed, *Domingo* upheld the exclusion of a

13   novel medical theory linking extensive malleting to FES that had never before been written

14   about, could be supported only by non-human animal studies, and contained logical flaws.

15   • *Finjan, Inc. v. Blue Coat Sys., Inc.*, No. 13-cv-03999-BLF, 2015 WL 4272870 (July 14,

16   2015) supports denying Arista's Motion. Although this Court excluded an expert who had

17   "disclose[d] no methodology other than to assert that he 'personally perform [] tests on the

18   Accused Products," the Court refused to exclude expert opinions from two other experts

19   who, like Professor Almeroth, "disclosed their testing methodology and the results that

20   they observed" and had been "deposed and thus subjected to unfettered questioning

21   regarding their testing." *Id.* *Finjan* thus shows that Arista's Motion is a challenge "not so

22   much to the reliability of [Professor Almeroth's opinions] as it is to the sufficiency of [his]

23   disclosures," and should be denied. *Id.*

24   • *XpertUniverse, Inc. v. Cisco Sys., Inc.*, No. 09-157-RGA, 2013 WL 1702159, at *1 (D.

25   Del. Feb. 25, 2013) is an inapposite one-page opinion excluding expert testimony about a

26   product that the expert-in-question ***never analyzed*** but instead attempted to offer an

27   opinion based on "inference." There is no dispute here that Professor Almeroth analyzed

28   thousands of lines of the Arista source code.

1   • In *Fleming v. Escort, Inc.*, No. 1:cv 09-105-BLW, 2012 WL 12539337, at *3 (D. Idaho

2   May 23, 2012), the Court excluded expert opinion where, unlike here, the expert failed to

3   explain how the source code he relied on operated. And in *GPNE Corp. v. Apple, Inc.*, No.

4   12-cv-02885-LHK, 2014 WL 1494247, at *4 (N.D. Cal. Apr. 16, 2014), the court excluded

5   a patent damages expert who failed to disclose the methodology (*i.e.*, the math) by which

6   he derived his royalty rate, failed to apportion, and relied on licenses that did not support

7   his opinions. Unlike *Fleming* and *GPNE*, where the experts offered "black box" opinions,

8   here Professor Almeroth has provided a detailed narrative of the operation of the Arista

9   parser code with citations to source code, a 225-page exhibit with citations to Arista's

10   source code, and supported that evidence with additional documentary and deposition

11   evidence, all of which Arista questioned him about. Opening Rpt. (Wong Decl. Ex. 1) at

12   ¶¶ 82-86, Exhibit Copying-6.

13   2.   **Professor Almeroth's Help Description Opinions Are Firmly Rooted In His Source Code Analysis and Arista Device Testing**

14
15   Arista also argues that Professor Almeroth's opinions relating to Arista's copying of

16   Cisco's "help descriptions" should be excluded because, according to Arista, he "performs no

17   source code analysis even suggesting that source code was copied." Mot. at 6. This argument

18   does not accurately reflect Professor Almeroth's opinions. The 400+ help descriptions that Arista

19   copied were literally copied *into* Arista's source code. Professor Almeroth clearly set forth that

20   opinion in, *e.g.*, paragraphs 225 to 230 in his Opening Report. Opening Report (Wong Decl. at

21   Ex. 1) at ¶ 225 ("There also is evidence of direct copying by Arista of Cisco's copyrighted works

22   *into* Arista's EOS programs."), ¶ 226 ("there is evidence that Arista copied over 500 multi-word

23   help descriptions from Cisco *into* its programs, and in doing so copied portions of Cisco's

24   programs.") (emphasis added). Thus, the help description copying relates to the textual strings

25   embedded in Arista's source code and displayed to a user, not to lines of computer programming

26   language surrounding those text strings. Moreover, Arista's argument fails because it ignores the

27   opinions in Professor Almeroth's reports and deposition testimony where he explained that he did,

28   in fact, perform source code analysis. Indeed, Professor Almeroth disclosed his methodology and

1   findings in his Opening Report. *E.g.*, Opening Rpt. (Wong Decl. Ex. 1) at ¶¶ 37, 47, 225-230.

2   And he also submitted a 225-page exhibit summarizing his findings (Copying Exhibit-6) with pin

3   cites to Arista source code files and lines that demonstrates precisely where Arista copied Cisco's

4   help descriptions into Arista's source code. *See* Copying Exhibit-6. He then explained those

5   opinions at his deposition. Almeroth Tr. (Wong Decl. Ex. 3) at 287:18-25. In contrast, Arista's

6   expert does not contest the contents of Copying Exhibit-6 and testified that he was never asked "to

7   make any sort of fully considered opinion of any kind" to rebut the help description allegations

8   and believed that it "would be a waste of time" to ask Arista about those allegations. Black Tr.

9   (Neukom Decl. Ex. 3) at 88:14-89:19, 90:15-18, 93:16-20. This Court should not exclude

10   Professor Almeroth's opinions simply because Arista is incapable of rebutting them.

11   **B.   Professor Almeroth Should Not Be Excluded From Offering Opinions That
                          Arista Copied The "Look and Feel" Of Cisco's CLI**

12

13   Arista contends that Professor Almeroth's opinion that Arista copied Cisco's "look and

14   feel" is unreliable because he did not define the "look and feel." Mot. at 7-8. This claim is

15   contradicted by Professor Almeroth's reports. According to Professor Almeroth's reports, the

16   Cisco CLI "look and feel" is comprised of the command line interface and its displays including

17   the command expressions, command outputs, hierarchies, modes, prompts, and help descriptions

18   screens. Opening Rpt. (Wong Decl. Ex. 1) at ¶ 65 (outputs), ¶ 174 (commands); Rebuttal

19   Rpt.(Wong Decl. Ex. 2) at ¶ 64 (commands, outputs, hierarchies, modes, prompts, help screens,

20   documents), ¶¶ 136, 145. Professor Almeroth confirmed this at his deposition. Almeroth Tr.

21   (Wong Decl. Ex. 3) at 126:6-18. And according to Professor Almeroth, Arista copied *all* of these

22   elements, and thus the "look and feel" of Cisco's CLI, such that "a user sitting in front of an Arista

23   CLI would have a hard time knowing that they were not actually using a Cisco CLI." Opening

24   Rpt. (Wong Decl. Ex. 1) at ¶ 145. Professor Almeroth reached these conclusions by first testing

25   both Cisco's and Arista's CLIs and then reviewing other available evidence, such as Arista

26   documents and public statements. For example, Arista has admitted publicly and privately that

27

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1   ███

2   (Wong Decl. Ex. 1) at ¶ 75; Rebuttal Rpt. (Wong Decl. Ex. 2) at ¶ 149. Professor Almeroth also

3   looked to third party sources to confirm his opinions and found that industry analysts agreed with

4   his opinions. Rebuttal Rpt. (Wong Decl. Ex. 2) at ¶ 150 ("[Arista] created a CLI that looks and

5   acts very much like Cisco's…."; "when I say 'CISCO like' I mean it's 95% the same

6   commands"). Accordingly, there is no merit to Arista's claim that the "works as a whole" were

7   not compared to assess differences and similarities (Mot. at 8)—that is precisely what Professor

8   Almeroth did, and he confirmed his opinions with additional available evidence.

9   Arista also argues that Professor Almeroth's "look and feel" opinions should be excluded

10   because at his deposition Professor Almeroth mentioned that there are similarities between Cisco's

11   CLI and Arista's CLI in addition to those at issue here. Mot. at 8. This is nothing more than a

12   strawman argument, and it should be rejected. None of Professor Almeroth's "look and feel"

13   opinions rely on any of those additional similarities—they are not mentioned in his reports and do

14   not form the basis for his opinions in those reports. Almeroth Tr. (Wong Decl. Ex. 3) at 127:21-

15   23 (hypothetically stating that "[o]ther characteristics *might* contribute to a conclusion that there's

16   a look and feel") (emphasis added). Arista's copying of additional CLI elements from Cisco that

17   Cisco is not asserting in this case does not negate Arista's infringement of the Cisco copyrighted

18   works. *Sheldon v. Metro-Goldwyn Pictures Corp.*, 81 F.2d 49, 56 (2d Cir. 1936). Arista's

19   complaint thus seeks to manufacture an irrelevant dispute, and it should be rejected.

20   **C.**   **Professor Almeroth Should Not Be Excluded From Presenting Factual**
     Evidence That Supports Arista's Liability For Copyright Infringement

21

22   Cisco does not dispute that technical experts should not opine on the subjective beliefs of

     others. In its Motion, however, Arista seeks to extend that unremarkable proposition to all *facts* as
23
     well. Mot. at 9. Arista argues that Professor Almeroth should not be permitted to cite or rely on
24
     deposition testimony where Arista's employees admitted to copying Cisco's CLI or where Arista's
25
     executives directed Arista's employees to copy. *Id.* Arista, however, fails to identify any specific
26
     instance where Professor Almeroth has offered opinions as to "intent" or the "subjective beliefs"
27
     of others. *Id.* Arista merely offers a string cite of dozens of paragraphs without identifying what
28

1   in those many paragraphs it finds objectionable. *Id.* It is black letter law that experts may rely on

2   and recite facts that underlie their opinions in order to explain the basis of their opinions to the

3   jury. Fed. R. Evid. 703. The Ninth Circuit has repeatedly confirmed this. *United States v.*

4   *Cazares*, 788 F.3d 956, 978 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 2484 (2016) ("An expert may

5   base an opinion on facts or data in the case that the expert has been made aware of or personally

6   observed."); *Paddack v. Dave Christensen, Inc.*, 745 F.2d 1254, 1261–62 (9th Cir. 1984). Thus, to

7   the extent that Arista seeks relief beyond excluding expert testimony on intent—and wants to

8   exclude Professor Almeroth from presenting evidence from which the jury could conclude for

9   themselves that Arista is liable for copyright infringement—such relief should be denied. Fed. R.

10   Evid. 702, Adv. Comm. Notes (2000) (encouraging "the use of expert testimony in non-opinion

11   form when counsel believes the trier can itself draw the requisite inference"); *Spreadsheet*

12   *Automation Corp. v. Microsoft Corp.*, 587 F. Supp. 2d 794, 803 (E.D. Tex. 2007).

13   **D.   Professor Almeroth Should Not Be Excluded From Presenting Opinions
                      Firmly Based On Facts**

14   Arista argues that experts should not "vouch" for the credibility of fact witnesses. Mot. at

15   9-10. This is another unremarkable proposition, and Cisco has no intention of having any expert

16   "vouch" for any fact witness. Thus, to the extent Arista seeks to exclude "vouching" testimony,

17   Cisco has no objection so long as the Court's order is applied to Arista and Cisco equally.

18   Arista's vague claim, however, that Professor Almeroth "vouches for Cisco's view of

19   disputed facts" lacks merit. Yet again Arista fails to actually identify any instance of this alleged

20   "vouching." *Id.* Arista instead string cites a dozen paragraphs without identifying who Professor

21   Almeroth is "vouching" for or what "disputed fact" he is vouching for or even what portion of the

22   cited paragraphs might be relevant to Arista's motion. *Id.* at 10. Arista provides no guidance that

23   would enable Cisco or the Court to fully understand the specific facts that Arista believes are

24   being "vouched" for. *Id.* ██████████████████████████

25   ██

26   ████████████████████████████████   Paragraph

27   98 likewise cites no testimony or any proposition that Professor Almeroth could be said to be

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02099-00004/8272797.1   CISCO'S OPP. TO ARISTA'S MOTION TO STRIKE ALMEROTH

1   improperly "buttressing"—it again reflects his opinions based on the materials he reviewed. *Id.* at

2   ¶ 98. Arista's vague "vouching" complaints, lacking specifics, should be rejected.

3   **E.**   **Professor Almeroth Should Not Be Excluded From Presenting Undisputed Evidence That Arista Copied Cisco's Technical Documents**

4

5   Having offered no opinions from its own expert to rebut Professor Almeroth's opinion that

6   Arista copied Cisco's technical documents, Arista now desperately seeks to exclude those

7   uncontested opinions. Mot. at 10. The thrust of Arista's argument is that because a layperson

8   could readily see the textual overlap between Cisco's documents and Arista's, Professor Almeroth

9   should not be permitted to opine about this form of copying.[3] Arista's attempt to downplay the

10   copying analysis should be rejected. Arista's argument ignores the expertise and rigor that

11   Professor Almeroth put into his analysis in formulating his opinion that Arista *copied* Cisco's

12   documentation. Unlike Arista's technical expert, Professor Almeroth is an expert in plagiarism—

13   he has spent years researching plagiarism and creating tools to assist in plagiarism detection.

14   Almeroth Tr. (Neukom Decl. Ex. 2) at 17:12-18:20; Opening Rpt. (Neukom Decl. Ex. 1) at ¶ 31,

15   Opening Rpt. (Wong Decl. Ex. 1) at ¶ 32. Professor Almeroth testified that in order to actually

16   determine that something has been copied, there is a "multistep process" that should be followed

17   where detecting "similarity" is just the first step. Almeroth Tr. (Neukom Decl. Ex. 2) 17:12-

18   18:20. In order for Professor Almeroth to reach an expert opinion on copying, therefore, he

19   needed additional evidence, such as ▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓

     ▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓ To formulate his opinions Professor Almeroth thus applied his

20   scientific, technical, and specialized knowledge in detecting copying. The analysis was not simply

21   a side-by-side comparison that any layperson could do.[4] Mot. at 10.

22   **III.**   **CONCLUSION**

23   For the foregoing reasons, Cisco respectfully requests that the Court deny Arista's Motion.

24   _____

25   [3] Arista never explains why the copying of text in user documentation is any different that the many other similar forms of copying Professor Almeroth opined on that Arista does not challenge.

26   [4] Arista also complains that Professor Almeroth "did not use any specialized tools." Mot. at

27   10. This argument fails not only because Arista failed to explain why those "tools" are necessary or required under the law, but as Professor Almeroth testified, the tools were not necessary to

28   formulate his opinions in this case. Almeroth Tr. (Wong Decl. Ex. 3) at 22:1-23:22.

1   Dated: August 19, 2016   Respectfully submitted,

2   */s/ John M. Neukom*_____

3   Kathleen Sullivan (SBN 242261)
                                               kathleensullivan@quinnemanuel.com
4   QUINN EMANUEL URQUHART &
                                               SULLIVAN LLP
5   51 Madison Avenue, 22nd Floor
                                               New York, NY 10010
6   Telephone: (212) 849-7000
                                               Facsimile: (212) 849-7100
7
                                               Sean S. Pak (SBN 219032)
8   seanpak@quinnemanuel.com
                                               Amy H. Candido (SBN 237829)
9   amycandido@quinnemanuel.com
                                               John M. Neukom (SBN 275887)
10   johnneukom@quinnemanuel.com.
                                               QUINN EMANUEL URQUHART &
11   SULLIVAN LLP
                                               50 California Street, 22nd Floor
12   San Francisco, CA 94111
                                               Telephone: (415) 875-6600
13   Facsimile: (415) 875-6700

14   Mark Tung (SBN 245782)
                                               marktung@quinnemanuel.com
15   QUINN EMANUEL URQUHART &
                                               SULLIVAN LLP
16   555 Twin Dolphin Drive, 5th Floor
                                               Redwood Shores, CA 94065
17   Telephone: (650) 801-5000
                                               Facsimile: (650) 801-5100
18
                                               Steven Cherny *admitted pro hac vice)*
19   steven.cherny@kirkland.com
                                               KIRKLAND & ELLIS LLP
20   601 Lexington Avenue
                                               New York, New York 10022
21   Telephone: (212) 446-4800
                                               Facsimile: (212) 446-4900
22
                                               Adam R. Alper (SBN 196834)
23   adam.alper@kirkland.com
                                               KIRKLAND & ELLIS LLP
24   555 California Street
                                               San Francisco, California 94104
25   Telephone: (415) 439-1400
                                               Facsimile: (415) 439-1500
26
                                               Michael W. De Vries (SBN 211001)
27   michael.devries@kirkland.com
                                               KIRKLAND & ELLIS LLP
28   333 South Hope Street

CISCO'S OPP. TO ARISTA'S MOTION TO STRIKE ALMEROTH